

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:TL-N-5733-00
MFLeichtman

date:

to: Gary Chin
[REDACTED] Audit Team Coordinator

from: MICHELE F. LEICHTMAN
Attorney

subject: [REDACTED] - Interest Netting

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DISCUSSION

Taxpayer [REDACTED] (" [REDACTED] ") claimed a refund on interest for the taxable years [REDACTED], [REDACTED], [REDACTED] and [REDACTED] pursuant to the holdings in May Department Stores Company and Subsidiaries v. United States, 36 Fed. Cl. 680 (1996) and Sequa Corporation v. United States, 99-1 U.S. Tax Cas. (CCH) ¶ 50,379 (1998). [REDACTED]'s statutes of limitations for claiming a refund on overpayments for the taxable years [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were closed as of [REDACTED]. [REDACTED] is not entitled to the refunds claimed.

ANALYSIS

May Department Stores and Sequa Corporation defer the running of interest on a deficiency where a taxpayer claims an overpayment for the taxable year and then applies the overpayment to the following year's estimated tax payments and does not request a refund for the overpayment. In such a situation, interest begins to run from the time that the taxpayer needs to apply the overpayment to the following year's estimated tax payment rather than from the time the deficiency arises. May Department Stores, supra; Rev. Rul. 99-40; Chief Counsel Notice N(35)000-168. For example, X Corp. files its 1998 federal income tax return on September 15, 1999 claiming an overpayment of 10x and requests to apply the overpayment to its estimated tax payments for the following year. X Corp. needed to make quarterly estimated tax payments of 10x for each quarter in 1999. However, X Corp. made quarterly estimated tax payments of 10x for each of the first two quarters of 1999 and made estimated tax payments of 5x for each of the last two quarters of the year. Accordingly, X Corp.'s overpayment was applied in the amounts of 5x for the third quarter and an additional 5x for the fourth quarter. The IRS determined that X Corp. had a deficiency, in the amount of 10x, for the taxable year 1998. Applying May Department Stores, interest will start running on X Corp.'s underpayment to the extent of 5x as of its 1999 third quarter estimated tax payment and an additional 5x as of its 1999 fourth quarter estimated tax payment.

Under Rev. Pro. 99-43, a taxpayer can claim a refund of interest pursuant to May Department Stores. However, the Special Effective Date rule in Rev. Proc. 99-43 requires that to claim a refund pursuant to May Department Stores, a taxpayer's statute of limitations for claiming such refund must be open on July 22, 1998. Rev. Proc. 99-43 § 4. The statute of limitations for claiming a refund is the later of three years from the date that a taxpayer files its federal income tax return or two years from the date that a taxpayer pays federal income tax for the relevant taxable year. I.R.C. § 6511(a). For [REDACTED], [REDACTED], [REDACTED] and [REDACTED], [REDACTED] filed its income tax return on or about September 15 of the calendar year following the relevant taxable year. [REDACTED] filed its federal income tax for [REDACTED] on September 15, [REDACTED]. September 15, [REDACTED] is three years from September 15, [REDACTED] and earlier than July 22, 1998. Applying the three year rule, the statute of limitations for claiming a refund would be closed

¹ [REDACTED] filed its federal income tax returns for [REDACTED], [REDACTED] and [REDACTED] on September 15, [REDACTED], September 15, [REDACTED] and September 15, [REDACTED], respectively.

for all four of the years for which [REDACTED] claimed a May Department Stores interest refund. [REDACTED] completed all of its payments of tax for [REDACTED], [REDACTED], [REDACTED] and [REDACTED] on or before [REDACTED], [REDACTED]. [REDACTED] is two years from [REDACTED], [REDACTED] and earlier than July 22, 1998. Applying the two year rule, the statute of limitations would be closed for [REDACTED]'s claim for a refund for [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

[REDACTED] argues that the Special Effective Date specified in Rev. Proc. 99-43 does not apply because the Internal Revenue Manual ("IRM") Section 121.1 "Methods of Computing Interest" does not refer to a Special Effective Date. [REDACTED]'s reasoning is incorrect. The IRM is merely an internal handbook. The IRM does not have the force and effect of law and is not binding upon the IRS. Rhone Poulenc Surfactants and Specialities, et.al. v. Commissioner, 114 T.C. 533 (2000) citing Griswold v. U.S., 59 F.3d 1571, 1576, n.8 (11th Cir. 1995); see also, First Federal Savings and Loan Association of Pittsburgh v. Melvin Goldman and Mildred Goldman and U.S., 644 F. Supp. 101 (W.D.Penn. 1986). Thus, the absence of the Special Effective Date from the IRM is not dispositive of the issue.

CONCLUSION

By virtue of the Special Effective Date in Rev. Proc. 99-43, [REDACTED] is not entitled to its May Department Store refund claims for [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

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